IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2658 OF 2005
IN
FIRST APPEAL NO.1113 OF 2005

The New India Assurance Co. Ltd. ... ... Applicant (Org.Insurer)

V/s.

1. Padmaben Navinben Shah & ors. ... Respondents (Res.Nos.1 to 7 are orig. Applicants and Res.No.8 is original Opposite Party No.1)

Mr.S.S. Vidyarthi i/by Mr.S.M.Vidyarthi for Applicant.

Mr.B.H. Bhalwal for respondents.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 17th August 2005

P.C. :

1. Heard Mr.Vidyarthi in support of this Civil Application. Mr.Bhalwal appears for the respondents.

2. This Civil Application seeks stay of the execution of the Award dated 24th February 2005 passed by the Motor Accident Claims Tribunal (for short, "Accident Tribunal") in Application No.1072 of 1998. As per the Award, the Registrar of the Accident Tribunal has called upon the

Applicant-Insurance Company to deposit the amount of Rs.34,78,000/- in the Accident Tribunal.

3. Mr.Vidyathi, learned Counsel appearing for the Applicant-Insurance Company, points out that out of the amount of Rs.34,78,000/-, the amount of Rs.34,25,000/- has been deposited in the Accident Tribunal and the amount of Rs.25,000/- has been deposited in this Court. The remaining amount of Rs.28,000/- has not been deposited. He submits that this amount of Rs.28,000/- is not deposited as per the practice of the Insurance Company to deduct the tax amount on the amounts paid under such Awards. He further points out that a writ petition has been filed to challenge these deductions being Writ Petition No.5441 of 2002. That writ petition has been admitted but there is no stay granted.

4. This being the position, as of now, we do not find any fault with respect to the amount which has been deposited in the Accident Tribunal as well as in this Court. The amount deposited in this Court will be transferred to the Accident Tribunal and to be kept as marked towards Application No.1072 of 1998.

5. Mr.Vidyarthi, learned Counsel appearing for the Applicant-Insurance Company, points out that the above amount is on higher side. He further points out that from the income tax returns of the deceased it is only in a year or two that the deceased had shown a huge income from his business whereas all throughout the salaried income was in the range of Rs.3,44,000/-. On that basis, according to him, at the most, the Award could have been of Rs.10,00,000/-.

6. Mr.Bhalwal, learned Counsel appearing for the respondents, undoubtedly opposes this submission and submits that though the business income is for about a year or two, that has got to be the basis for the Award which has been passed by the Accident Tribunal. He has an objection to the maintainability of the Appeal. However, having seen the judgment of the Apex Court in the case of **National Insurance Co.Ltd. vs. Nicolletta Rohtagi & ors. reported in 2002 ACJ 1950**, in our view, in a case where the owner has not filed a written statement, the Insurance Company is entitled to defend the matter on grounds other than those which are restricted under Section 149(2) of the Motor Vehicles Act, 1988.

7. Mr.Bhalwal pointed out that the Insurance Company has only filed a written statement and done nothing more. That is an aspect which will be gone into when the Appeal is heard which has already been admitted.

8. Mr.Vidyarthi appearing for the Applicant-Insurance Company submitted that the Insurance Company could not have done anything more. It is only concerned with the inference drawn with respect to negligence and the quantum which is a matter of arguments. These are aspects which will be gone into when the Appeal is heard.

9. Mr.Bhalwal appearing for the respondents points out that two daughters of the deceased are of marriageable age and, therefore, that aspect should be considered when a withdrawal from the deposit is permitted.

10. Considering the totality of these factors, we permit respondent No.1, widow of the deceased, to withdraw the amount of Rs.15,00,000/- from the amount which has been deposited. Half of this amount i.e. Rs.7,50,000/- will be released unconditionally and the remaining amount of

Rs.7,50,000/- on giving a Bank Guarantee of a Nationalised Bank. As far as the remaining amount is concerned, that will remain deposited with the Accident Tribunal and to be invested in a Nationalised Bank for a period of 37 months to begin with and the deposit to be renewed by 13 months at a time until further orders are received from the High Court. It will be open to respondent No.1 to withdraw this portion of the amount also, although by giving a Bank Guarantee of a Nationalised Bank.

11. Mr.Bhalwal appearing for the respondents states that the respondents other than respondent No.1 have no objection to respondent No.1 withdrawing the said amount of Rs.7,50,000/- unconditionally and the remaining amount on giving a Bank Guarantee. They will file an affidavit to that effect in this Court and give a copy to the appellant and file it in Tribunal and thereafter those amounts will be released.

12. Civil Application stands disposed of.

13. All parties will act on an authenticated copy of this order.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)